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Γ	APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR		ATTORNEY DOCKET NO.
_	08/942,369	10/02/9	/ CHEN	U	ZZD/Z10 — -

HM32/0608

LYON & LYON FIRST INTERSTATE WORLD CENTER 633 WEST FIFTH STREET SUITE 4700 LOS ANGELES CA 90071-2066

EXAMINER				
MORAN, II				
ARTLINIT	PAPER NUMBER			

DATE MAILED:

06/08/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 08/942,369

Applicant(s)

Marjorie Moran

Examiner

Group Art Unit

Chen et al

1623



☐ Responsive to communication(s) filed on				
☐ This action is FINAL .				
Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.				
A shortened statutory period for response to this action is set to expire month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).				
Disposition of Claims				
Of the above, claim(s) is/are withdrawn from consideration.				
☐ Claim(s)is/are allowed.				
☐ Claim(s) is/are rejected.				
☐ Claim(s) is/are objected to.				
 ☐ The drawing(s) filed on is/are objected to by the Examiner. ☐ The proposed drawing correction, filed on is approved disapproved. ☐ The specification is objected to by the Examiner. ☐ The oath or declaration is objected to by the Examiner. Priority under 35 U.S.C. § 119 ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received. 				
received in Application No. (Series Code/Serial Number)				
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)). *Certified copies not received:				
☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).				
Attachment(s)				
 Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper No(s) Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-948 Notice of Informal Patent Application, PTO-152 				
SEE OFFICE ACTION ON THE FOULOWING PAGES				

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11 and 19, drawn to an apparatus comprising compartments capable of containing medium, classified in class 435, subclass 287.1.
- II. Claims 12-18, drawn to a method of detecting microorganisms, classified in class 435, subclass 32.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the method claimed for detecting microorganisms and simultaneously determining susceptibility to antimicrobial agents may be practiced using any device or combination of devices wherein microorganisms may be grown on appropriate medium. Likewise, the device claimed may be used to detect the presence of any microorganism and the susceptibility of that microorganism to any antibiotic agent.

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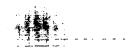
Art Unit: 1623

These inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, so restriction for examination purposes as indicated is proper. Likewise, because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper. In addition, because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

A telephone call was made to Mary Consalvi on 5/29/98 to request an oral election to the above restriction requirement, but did not result in an election being made.





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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marjorie Moran whose telephone number is (703) 305-2363. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knode, can be reached at (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Marjorie A. Moran

Patent Examiner

Art Unit 1623

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June 5, 1998

KATHLEEN K. FONDA PRIMARY EXAMINER

Failler Boller Donde